

M. Gregory Balko, M.D.
Medical Legal Consultants, Inc.

21 West Henry Clay Avenue
Fort Wright, KY 41011
Phone 859-341-0003
Fax 859-344-0964

March 20, 2014

Tamela J. White
Farrell, Farrell & Farrell, PLLb
914 Fifth Avenue
Huntington, WV 25772-6457

Dear Ms. White:

At your request, I reviewed the following materials from the *Pymale v. Miller* case.

1. The Complaint,
2. 4 glass tissue slides – St. Mary's Medical Center - SSP11-09333 (2 recuts) and Dermatopathology Labs of Central States - D12-50459 (2 slides),
3. 2 corresponding pathology reports,
4. Plaintiff's Expert Witness Disclosure.

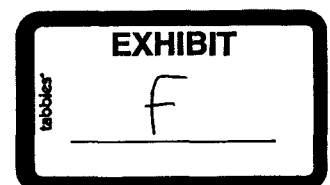
I am a licensed physician certified by the American Board of Pathology in anatomic pathology, neuropathology and forensic pathology.

The contents of this report are based upon extensive education, training and experience in anatomic, forensic and neuropathology. The opinions are expressed with reasonable medical probability.

Review of the 2 glass tissue slides, D12-50459, reveals the presence of a melanoma with involvement of the tissue margins. Examination of the recut glass tissue slides, SSP11-09333, discloses decalcified fragments of osteoporotic, focally fibrotic, bone and scant associated soft tissue. Processing artifact is present. Tumor is not identified. Photomicrographs of both specimens have been prepared.

These opinions are based on the materials and the information available to me at the time of this report. I have requested and intend to review the original tissue slides upon those being made available through the hospital. I reserve the right to change, expand or amend this report if additional evidence is submitted for my consideration.

Sincerely,



M. Gregory Balko M.D.

M. Gregory Balko, M. D.

Matt Lindsay

From: Samantha Thomas-Bush <STB@farrell3.com>
Sent: Monday, March 17, 2014 11:44 AM
To: Matt Lindsay
Cc: Tammy J. White; Susan McGlone; Anne L. Honaker
Subject: Plymale matter

Matt:

Your assistant advised you are in trial. I left you a voicemail just now about two issues:

- 1) The pathology slides at St. Mary's – as you know, we requested recut slides. Our expert witness would like to view the original slides. We would like to take personal possession of the slides, take them to our expert, and return them to the hospital within a 24-48 hour period. Please let me know if this is agreeable to you.
- 2) The supplementation on Dr. Singer – his CV and attachments do not list the last 4 years of his testimony. The most recent date on there is from 2010, and as you know, there are more recent dates during which he has provided testimony.

Samantha L. Thomas-Bush, Esq.

Farrell, White & Legg PLLC
914 Fifth Avenue
P.O. Box 6457
Huntington, West Virginia
25772-6457
Telephone: (304) 522-9100
Facsimile: (304) 522-9162
Web: www.farrell3.com



FARRELL, WHITE & LEGG PLLC
ATTORNEYS & COUNSELLORS

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Matt Lindsay

From: Matt Lindsay
Sent: Tuesday, April 08, 2014 1:46 PM
To: 'Anne L. Honaker'
Cc: Tammy J. White; Samantha Thomas-Bush; Susan McGlone; Valerie Scheidler
Subject: RE: Plymale v. Miller, Civil Action No. 3:13-cr-14953

Samantha –

Although I disagree with your letter, it appears the issue you had regarding plaintiff's expert witness disclosure is resolved. I have not seen any filing that withdraws the motion. As you are aware, I have limited time to file a response, and the withdraw should be entered before then. Please let me know when I might expect that notice to be filed.

Also, given your expert witness disclosure and the incomplete opinions of your pathologist, I would like to extend the rebuttal expert witness disclosure. First, when do you expect to supplement your pathologist's opinions? Secondly, are you willing to stipulate to extending the deadline?

Matthew C. Lindsay, J.D., M.D.
Tabor Lindsay & Associates
PO Box 1269
Charleston, WV 25325
P (304) 344-5155
F (304) 344-5188

From: Anne L. Honaker [<mailto:ALH@farrell3.com>]
Sent: Friday, April 04, 2014 2:44 PM
To: Matt Lindsay
Cc: Tammy J. White; Samantha Thomas-Bush; Susan McGlone; Valerie Scheidler; Anne L. Honaker
Subject: Plymale v. Miller, Civil Action No. 3:13-cr-14953

Good afternoon, Mr. Lindsay,

Attached please find correspondence from Samantha Thomas-Bush regarding the above referenced matter.

Thank you and have a nice day.

Sincerely,
Anne Honaker

Anne L. Honaker
Legal Secretary To
Charlotte A. Hoffman Norris,
Samantha Thomas-Bush
and Alexander L. Turner
Farrell, White & Legg PLLC
914 Fifth Avenue
Huntington, WV 25701
(304) 522-9100 (Main)
(304) 781-1801 (Direct)
(304) 781-1867 (Fax)



FARRELL, WHITE & LEGG PLLC

alh@farrell3.com

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FARRELL, WHITE & LEGG PLLC

ATTORNEYS AND COUNSELLORS
 914 FIFTH AVENUE
 POST OFFICE BOX 6457
 HUNTINGTON, WEST VIRGINIA 25772-6457
 WWW.FARRELL3.COM

MICHAEL J. FARRELL,¹
 JOSEPH M. FARRELL, Jr.,²
 JAMIE A. WHITE,^{1,2}
 CHARLOTTE A. HOFFMAN NORRIS
 ERIK W. LEGG,²
 BERNARD S. VALLEJOS
 ALEXANDER L. TURNER
 MEGAN FARRELL WOODYARD
 SAMANTHA THOMAS-BUSH¹

April 8, 2014
Via facsimile

OF COUNSEL:
 CHRISTINA L. SMITH

TELEPHONE (304) 522-9100
 FACSIMILE (304) 522-9162

FILE #: 1051.0001

Matthew Lindsay, Esquire
 Tabor Lindsay & Associates
 P.O. Box 1269
 Charleston, WV 25325
 mlindsay@taborlindsay.com

**Re: Dawn McComas, Executrix of the Estate of Billie Plymale
 v. Kirt Thomas Miller, D.P.M.
 United States District Court, Southern District of West Virginia
 Civil Action No. 3:13-cr-14953**

Dear Matt:

I am in receipt of your e-mail from this afternoon. First, a *Notice of Withdrawal of the Motion to Compel* was filed earlier today. You should have received notice of the same through the ECF system by now.

Secondly, you request an indefinite extension of the rebuttal expert deadline. We cannot agree to that. The fact that tissue pathology was taken during Dr. Miller's surgery on the decedent has been known to the plaintiff since the date of that procedure. Plaintiff's argument in the Complaint, expert disclosure by Dr. Singer, and in deposition has been that there was no pathology evaluation of the resection tissue. The original tissue block has been available to plaintiff since the date of the original surgery.

Rebuttal is for new issues not known or discoverable by a party as of the time of expert disclosure. There is no reason to extend the rebuttal period in this case.

Dr. Balko will review original tissue material to determine whether the recut slides accurately reflect that which is apparent from review of the entire specimen. A subpoena was served today on the St. Mary's pathology department at their request, and our intention is to have the slides reviewed by Dr. Balko by April 25, 2014. Any supplemental opinion of Dr. Balko will be provided shortly thereafter, as to that which Dr. Balko may ascertain from the original tissue block.

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Matt Lindsay

**Re: Dawn McComas, Executrix of the Estate of Billie Plymale
v. Kirt Thomas Miller, D.P.M.
United States District Court, Southern District of West Virginia
Civil Action No. 3:13-cr-14953**

April 8, 2014

Finally, I'm not sure what you are referencing when you say you "disagree with my letter," so please advise if there is an unresolved issue from my correspondence of April 7, 2014.

Very truly yours,



Samantha Thomas-Bush

cc: Tamela J. White, Esq. (via e-mail)